IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	1:18-CR-370-RP
	§	
EDWARD JOSEPH CURRAN III,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Defendant Edward Joseph Curran III's ("Curran") motion to suppress the evidence obtained in the search of Curran's vehicle and any statements obtained as a result. (Dkt. 23). The Government filed a response. (Dkt. 26). The Court held a hearing on the motion on March 11, 2019. (Hr'g Tr., Dkt. 38). The parties also submitted post-hearing briefing. (Dkts. 37, 39). Having reviewed the parties' submissions, the record, and the applicable law, the Court will deny the motion.

I. BACKGROUND

Curran is charged in a three-count indictment with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(b)(1)(B); and carrying a firearm during and in relation of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). (Indictment, Dkt. 1).

On October 5, 2018, Austin police officers arrested Curran. (Mot. Suppress, Dkt. 23 at 1; Resp., Dkt. 26, at 3). The officers conducted a search of Curran's vehicle, and uncovered evidence of the offences charged in the indictment. Curran asks the Court to suppress the evidence obtained in the search of his vehicle, as well as any statements obtained as a result of that search, because the officers conducted a warrantless search that fails to satisfy an exception to the warrant requirement

under the Fourth Amendment. (Dkts. 23, 37). The Government responds that the officers properly conducted an inventory search of a vehicle pursuant to a lawful arrest under a well-defined exception to the Fourth Amendment's warrant requirement. (Resp., Dkt. 26, at 7 (citing *Colorado v. Bertine*, 479 U.S. 367, 371 (1987)).

During the hearing, the two officers who arrested Curran provided testimony. The Government also submitted audio and video recordings from the officers' body cameras. The parties do not dispute that Curran was lawfully arrested based on several outstanding warrants. (Mot., Dkt. 23, at 1). They also agree that the officers did not have a warrant to search the vehicle. The question before the Court is whether the search of the vehicle was an inventory search that satisfies the Fourth Amendment.

II. LEGAL STANDARD

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "A defendant normally bears the burden of proving by a preponderance of the evidence that the challenged search or seizure was unconstitutional." *United States v. Waldrop*, 404 F.3d 365, 368 (5th Cir. 2005) (citing *United States v. Guerrero–Barajas*, 240 F.3d 428, 432 (5th Cir. 2001)). "However, where a police officer acts without a warrant, the government bears the burden of proving that the search was valid." *Id.* (citing *United States v. Castro*, 166 F.3d 728, 733 n. 7 (5th Cir. 1999) (en banc)). "Warrantless searches and seizures are per se unreasonable unless they fall within a few narrowly defined exceptions." *United States v. McKinnon*, 681 F.3d 203, 207 (5th Cir. 2012) (quoting *United States v. Kelly*, 302 F.3d 291, 293 (5th Cir. 2002)).

Under the inventory exception, "an inventory search of a seized vehicle is reasonable and not violative of the Fourth Amendment if it is conducted pursuant to standardized regulations and procedures that are consistent with (1) protecting the property of the vehicle's owner, (2) protecting

the police against claims or disputes over lost or stolen property, and (3) protecting the police from danger." *McKinnon*, 681 F.3d at 209 (quoting *United States v. Hope*, 102 F.3d 114, 116 (5th Cir. 1996)); *see also United States v. Lage*, 183 F.3d 374, 380 (5th Cir. 1999). Inventory searches "may not be used as a pretext for intrusive investigatory searches that would otherwise be impermissible." *United States v. Prescott*, 599 F.2d 103, 105 (5th Cir. 1979) (citations omitted). For this reason, the standardized regulations and procedures for an inventory search must "sufficiently limit the discretion of law enforcement officers to prevent inventory searches from becoming evidentiary searches." *McKinnon*, 681 F.3d at 210 (quoting *United States v. Andrews*, 22 F.3d 1328, 1336 (5th Cir. 1994)). "[R]easonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment." *Bertine*, 479 U.S. at 374 (1987).

III. DISCUSSION

Curran argues that the vehicle search was not an inventory search because (1) the officers' motivation was evidentiary, not administrative or caretaking; and (2) the officers did not follow the Austin Police Department Policy governing inventory searches because they failed to complete the inventory of property discovered in the vehicle.[1] The Court considers each of these in turn.

First, Curran contends that the officer's actions, "viewed from an objective standpoint," demonstrate that their primary motivation was an evidentiary search, not mere inventory. (Supp. Br., Dkt. 37, at 3 (citing *United States v. Judge*, 864 F.2d 1144, 1146 (5th Cir. 1989)). When they encountered Curran, the officers were parked outside of a suspected illegal gambling site and "checking plates to see if there were any stolen cars in the parking lot." (Officer Test., Dkt. 38, at 48:14–15). Additionally, on their body camera audio, the two officers can be heard describing to a trainee how they typically conduct license plate checks and traffic stops in an area where they suspect criminal activity. (*See* Govt. Ex. 12, Dkt. 31).

[1] Curran does not challenge the Austin Police Department Policy.

However, the evidence indicates that the officers searched Curran's car only after arresting him, consistent with APD Policy. That policy provides that officers shall conduct an inventory for any vehicle impounded at the time of an arrest. *See* Policy Manual, §§ 350.4 and 319.4; (*see also* Resp., Dkt. 26, at 7–8). "If an inventory search is otherwise reasonable, its validity is not vitiated by a police officer's suspicion that contraband or other evidence may be found." *Prescott*, 599 F.2d at 106 (citing *United States v. Ducker*, 491 F.2d 1190, 1192 (5th Cir. 1974)). Moreover, "[i]f there is no showing that the police acted in bad faith, or for the sole purpose of investigation, evidence discovered during an inventory search is admissible." *United States v. Gallo*, 927 F.2d 815, 819 (5th Cir. 1991) (citing *Bertine*, 479 U.S. at 372). Although there may be "mixed motives in the vast majority of inventory searches," *Judge*, 864 F.2d at 1147 n.5, the Court cannot find that the officers acted in bad faith or searched the car "for the sole purpose of investigation." *See Gallo*, 927 F.2d at 819 (citing *Bertine*, 479 U.S. at 372).

Second, Curran argues that the officers did not follow the Austin Police Department Policy governing inventory searches because they failed to complete the written inventory of property discovered in the vehicle. (Supp. Br., Dkt. 37, at 4–5; APD Impound/Wrecker Report, Dkt. 37-1). But the Fifth Circuit has previously rejected a similar argument. *See United States v. Loaiza-Marin*, 832 F.2d 867, 869 (5th Cir. 1987) (citing *United States v. Trullo*, 790 F.2d 205, 206 (1st Cir. 1986); *United States v. O'Bryant*, 775 F.2d 1528, 1534 (11th Cir. 1985)) ("Although the Border Patrol procedures indicate that the forms should have been completed, other courts addressing the same issue have concluded that failure to compile the written inventory does not render the inventory search invalid. . . .We do likewise.").

Additionally, although Curran cites *United States v. Hope* for the rule that failure to comply with standardized procedures is strong evidence that a search is unreasonable, in that case the record was "devoid of any evidence that standard inventory procedures were in place and were, in fact, followed by the Memphis police when they searched the Honda." *Hope*, 102 F.3d at 117. But here,

the Austin Police Department has standard inventory procedures in place and the officers testified that they deliberately complied with that policy. In particular, they testified that the policy does not require them to inventory every item in the vehicle; only "high value" items. (Officer Test., Dkt. 39, at 36:13–14 ("A: Based on my training, it's just the high-value items. Q: The high-value items? A: The things that would be at risk for somebody—the more potential for someone to steal or take.")). The Court is satisfied that the officers reasonably complied with the APD inventory policy that that the vehicle search was a valid inventory search under the Fourth Amendment.

IV. CONCLUSION

Accordingly, Curran's motion to suppress, (Dkt. 23), is **DENIED**.

SIGNED on April 23, 2019.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE